

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DEC 22 2 1:04

DOCKET # 05-11738-EFH

Brendan M. McGUINNESS, PRO SE
Plaintiff,

vs.

James R. BENDER, et al.
Defendants.

MOTION TO AMEND COMPLAINT
AS TO DEFENDANTS AND FACTS.

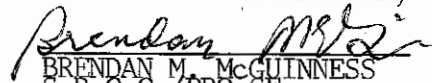
Now comes the plaintiff, pro se, to respectfully request this Honorable Court's permission to amend his complaint. The reason is that the event described in the original complaint, while an isolated incident, was in fact merely one result of several unlawful things done to plaintiff by the DOC defendants and a few officials at the Norfolk County Correctional Facility (NCCF). The amended complaint plaintiff proposes and requests to submit is attached. The main thrust of the amended complaint is that the three defendants named therein, all employees at NCCF, working in connection with the DOC, conspired to place plaintiff in a State Prison in violation of state law. (Article 12, MDR, prohibits the legislature from enacting any law which subjects any person to an "infamous punishment" without trial by jury; plaintiff was a pre-trial detainee yet the DOC took custody of him and treated him like a convicted felon for almost a year supposedly under M.G.L. c. 276, sec. 52A---which seems to violate art. 12 as applied here.)

The Court may be asked to exercise pendant state law jurisdiction, but the heart of this entire law suit is due process: plaintiff, as a pre-trial detainee, has been punished in every sense of the word. In fact, he was even sentenced to the DDU as a pre-trial detainee and, now that he has been sentenced, the DOC is holding that sanction against him (i.e. he has not even been afforded an initial classification).

WHEREFORE, this motion should be allowed.

DATE: 12/15/05

RESPECTFULLY SUBMITTED,


BRENDAN M. McGUINNESS
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